BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking on the Commission's Own Motion into the Service Quality Standards for All Telecommunications Carriers and Revisions to General Order 133-B.	R. 02-12-004

OPENING COMMENTS OF PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T CALIFORNIA (U 1001 C) AND CERTAIN AFFILIATES PROVIDING TELECOMMUNICATIONS SERVICES IN CALIFORNIA IN RESPONSE TO MARCH 20, 2007 ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO

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May 14, 2007

Pacific Bell Telephone Company ("AT&T California") and certain affiliates providing telecommunications services in California[1] (collectively, "AT&T") respectfully file these comments in response to the Assigned Commissioner's Ruling and Scoping Memo dated March 30, 2007 ("3/30/07 ACR").[2]

I. INTRODUCTION

In 2006, the Commission fundamentally altered the manner in which it regulates telecommunications. In March 2006, the Commission "chart[ed] a new regulatory role [for itself] in the face of swift technological advances; the convergence of voice, data, and video; and increasing competition in the telecommunications marketplace."[3] The Commission rejected proscriptive consumer protection rules and embarked on a consumer education initiative in recognition of the need to "adjust to this newly competitive environment."[4] Shortly thereafter, the Commission determined that competition merited elimination of nearly all regulatory oversight of rates and other regulatory burdens[5] for the large and mid-sized incumbent carriers.[6] In light of this broad shift in regulatory approach, the 3/30/07 ACR appropriately observes that "it is clear that the Commission's service quality regulations must change."[7]

The recent Commission decisions finding that competition justifies regulatory forbearance with respect to consumer protection and rate regulation make clear that while reliance on competition was important at the time of the 2003 comments in this proceeding, it now has become

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1 The affiliates participating in these comments are: AT&T Communications Of California, Inc. (U-5002-C); AT&T Mobility LLC (New Cingular Wireless PCS, LLC (U 3060 C), Cagal Cellular Communications Corporation (U 3021 C), Santa Barbara Cellular Systems, Ltd. (U 3015 C), and Visalia Cellular Telephone Company (U 3014 C)); TCG Los Angeles, Inc. (U 5462 C); TCG San Francisco (U 5454 C); TCG San Diego (U 5389 C).

2 The April 12, 2007 Administrative Law Judge's Ruling Granting Extension of Time to File Opening and Reply Comments extended the deadline to file opening comments from April 30, 2007 until May 14, 2007.

3 D.06-03-013, *Decision Issuing Revised General Order 168, Market Rules to Empower Telecommunications Consumers and to Prevent Fraud*, at 2.

4 *Id.* at 2-3.

5 The Commission also found that competition was sufficient to allow reduction or elimination of many of the vestiges of rate-of-return regulation, and elimination of all monitoring reports tied to the now outdated New Regulatory Framework for the large and mid-sized incumbent carriers.

6 D.06-08-030, *Opinion in Order Instituting Rulemaking on Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities*.

7 3/30/07 ACR at 3.

imperative. The 3/30/07 ACR continues the progress started in the 2006 Commission decisions by noting that ". . . a goal of state policy is to rely on competition, wherever possible, to promote broad consumer interests . . ." Accordingly, the role of service quality regulation must be fundamentally changed and limited only to those narrow circumstances in which competition alone cannot promote consumer interests.

As the Commission has found, competition generally is effective to promote consumer interests. To the extent that the Commission believes that it needs to continue to monitor service quality, at least in the short term, the 3/30/07 ACR correctly focuses on customer satisfaction surveys. Customer surveys can facilitate broad access to comparable, accurate and reliable information that allows consumers to make informed choices. AT&T believes customer surveys are the most reasonable source of data in a competitive market. Many surveys of the telecommunications industry, or certain segments or products within the industry, already exist. While narrowly tailored regulation relating to public safety and/or network reliability issues also may have value in a regulatory system primarily driven by competition, AT&T believes that existing state and federal protections are sufficient and, therefore, no further measures are necessary.

Unlike a system premised on competition, the current system of monitoring and reporting compliance with outmoded service quality measurements results in unnecessary costs, distortion of the market, and consumer confusion.[8] The Commission's role necessarily has changed because its "traditional regulatory approach . . . is ill-suited for this modern telecommunications marketplace."[9] Because the Commission does not have uniform jurisdiction over all competitors in the telecommunications market, those who are subject to service quality regulation are disadvantaged in their ability to offer competitive services and by the costs inherent in complying with the service quality rules. Current service quality measures do not provide useful information for consumers to

[8] While the wireless industry is not (and cannot be) subject to each service quality measure, such as G.O. 133-B, even a lesser level of regulation interferes with the competitive market and should be eliminated.

[9] D.06-03-013 at 3.

select among carriers, but impose costs on the regulated carriers not borne by other communications service providers. In short, the hodgepodge of service quality standards resulting from G.O. 133-B, merger conditions, and other company-specific requirements distorts the functioning of a competitive market without a commensurate benefit to consumers. Performance standards should be eliminated in furtherance of this Commission's clearly articulated goal of relying on competition.

II. RELYING ON COMPETITION TO REGULATE SERVICE QUALITY IS CONSISTENT WITH RECENT COMMISSION DECISIONS, INCLUDING URF AND THE CONSUMER BILL OF RIGHTS.

Consistent with its statutory mandates, the Commission already has recognized that a lighter regulatory touch is appropriate based upon the flourishing competitive telecommunications market in California. Applying this enlightened regulatory approach to service quality is not a revolutionary change, but rather the logical next step consistent with decisions that already have been made.

A. The Telecommunications Marketplace Is Competitive.

There is no doubt that the telecommunications market in California is populated by a diverse and growing group of service providers utilizing an expanding array of technologies:

> [Since 2000], the communications industry has undergone a profound transformation. The wireless telephone industry grew at such a rapid pace that by December of 2004 . . . the number of wireless subscriber lines in the United States surpassed the number of wireline subscriber lines. In that same period, the first Internet-based Voice over Internet Protocol (VoIP) telephone companies made their appearance; peer-to-peer software allowed free voice communications between any two computer users with broadband Internet access; major cable companies began offering cable-based voice telephony; and high speed advance Internet service became available to ninety-five percent of U.S. households.[10]

Based on the proliferation of options available for telephone service, the Commission found "that arguments . . . that contend there is little competition and that the incumbent carriers retain market power are unpersuasive."[11]

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[10] D.06-03-013 at 2.
[11] D.06-08-030 at 124.

B. The Same Authority that Supported Prior Commission Decisions Applies Here.

"A central premise of [the current regulatory framework] is the recognition that competitive markets provide the most effective consumer protection: the power of choice."[12] "Increasing competition in the provision of telecommunications services reduces the need for Commission regulation of telephone service providers."[13] State and Federal statutes encourage reliance on competition to achieve many important policies, including high-quality service. For example:

- Public Utilities Code section 709 expresses a policy of "assuring the continued affordability and wide spread availability of high quality telecommunications services to all Californians";
- Public Utilities Code section 709.5 "endorses a reliance on competitive markets to achieve these goals [articulated in Public Utilities Code section 709]";
- "If AT&T-C prices it services too high or if its service quality deteriorates, customers will have the incentive to switch to a lower-priced or better quality carrier." D.93-02-010.
- The purpose of the Telecommunications Act of 1996 is "[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers . . ." 47. U.S.C. pmbl.

Not only do State and Federal statutes encourage reliance on competition, but they endeavor to do so in technologically and competitively neutral ways. For example, both Public Utilities Code section 709(c) and section 706(a) of the Telecommunications Act of 1996 encourage the development and deployment of new technologies.[14] "The Commission does not have equal authority over all communication service providers."[15] Accordingly, competitive and technological neutrality requires light-handed regulation.

The Commission recently has assessed the state of competition and the statutes and polices applicable to its regulation of telecommunications carriers, and repeatedly found that competition

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12 D.06-03-013 at 2.
13 *Id.* at Finding of Fact 18.
14 *See* D.06-08-030 at 38-39 (discussing State and Federal policies of neutrality).
15 *Id.* at 42.

can and should be the primary force in telecommunications regulation. The Commission already has defined its role as a limited one, involving facilitating an effective market through consumer education and narrow circumstances in which the benefits of the rules "clearly outweigh their incremental costs," such as public safety rules.[16] It follows that there simply is no reason why competition cannot regulate service quality when it can protect consumers, ensure competitive prices, and justify the elimination of certain asymmetric requirements previously applicable only to the incumbent carriers, including marketing, administrative processes, state accounting requirements, and auditing.

III. TRADITIONAL SERVICE QUALITY REGULATION IS OUTMODED; TO THE EXTENT SERVICE QUALITY INFORMATION IS NEEDED IT SHOULD BE DERIVED FROM CONSUMER EXPERIENCE.

The applicable statutory framework does not mandate voluminous reports with marginal, if any, utility, but rather the "provision of sufficient information for making informed choices [and] establishment of reasonable service quality standards . . ."[17] Reliance on competition, combined with customer satisfaction information and existing requirements relating to public safety, satisfy this obligation. "Information gathered and disseminated to consumers, along with mandated minimum performance levels where required for consumer protection, enhance competition by assuring customers of the safety of the products offered and providing comparable measurements of important product characteristics."[18]

A. Customer Surveys Are Adequate Replacements for Outdated Service Quality Standards.

The Commission already has acknowledged the importance of reliable information in a regulatory environment premised on competition. Specifically, in the Consumer Bill of Rights

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16 D.06-03-013 at 65.

17 Public Utilities Code § 709(h).

18 Comments of Dr. Robert G. Harris in R.02-12-004, Prepared for SBC California, filed April 1, 2003 ("Harris Opening"), p. 26.

decision, the Commission largely embraced consumer education initiatives, rather than proscriptive rules.[19] The reason is clear: Competitive markets thrive with increased information.[20]

1. Traditional Service Quality Standards Interfere with a Competitive Market.

Traditional service quality regulation was appropriate in a monopolistic market in which price was fixed, consumers had no choice of service provider, and the only way to ensure quality service was to dictate minimum standards.[21] In a competitive market, however, "overly stringent quality standards can preclude customers from purchasing the price-quality combination they value most."[22]

Dr. Harris' Opening Comments discuss at length the continuum in which consumers choose varying price-quality combinations that provide them the most value.[23] Dr. Harris explained that, once sufficient safety protections exist to instill confidence in the market,[24] consumer value can increase by a reduction in service quality and price.[25] As an example, Dr. Harris noted that Southwest Airlines consistently scores high on consumer satisfaction surveys notwithstanding some sacrifices of comfort and convenience because Southwest offers lower prices while meeting basic safety standards.[26] Quality service to one is not quality service to all.[27] While some customers may value superior customer service at a premium price, the Southwest example demonstrates that these customers are not representative of all customers. The Commission's regulatory scheme should be responsive to the range of customer preferences supported by the competitive market.[28]

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19 D.06-03-013 at 4.
20 Harris Opening at 18-19.
21 *Id.* at 23.
22 *Id.* at 20.
23 *Id.* at 20-30.
24 As discussed in Section III.B, below, this Commission recently has examined public safety rules applicable to telecommunications carriers and determined that existing rules, as supplemented in D.06-03-013, adequately protect consumers in California. Further protections not noted in D.06-03-013 relating to the reliability of the telecommunications network also exist. Just as with safety rules applicable to airlines such as Southwest, telecommunications consumers enjoy extensive public safety protections that allow them to have confidence in a market offering varying price-quality combinations. *See* Harris Opening at 36.
25 *Id.* at 21-22.
26 *Id.*
27 *Id.* at 20-30.
28 *Id.* at 9.

2. Information Useful to Consumers, Rather than Arbitrary Measures, Facilitates a Competitive Market.

In a competitive market, consumers rather than regulators are the primary users of information. The information obtained, therefore, should be tailored to consumers' needs, not the perceived needs of a telecommunications regulator. Information that is redundant, overly complicated or unrelated to consumer decision-making may interfere with the functioning of a competitive market.[29] Information that allows consumers to compare alternate service quality choices is more valuable than comparing performance to an arbitrary fixed standard.[30]

"[I]n order to facilitate informed choices among available voice services, quality information must be available from all providers, easily obtained, comparable, accurate and reliable."[31] Continuing to rely on regulated carriers to supply service quality information raises a host of problems that will plague the Commission, consumers, and carriers because of the limitations inherent in supply-side information. For example, jurisdictional limits prevent carrier-supplied information from covering all providers. Data that is incomplete or not comparable is not useful to consumers in making informed choices, and may actually mislead them. In fact, if incomplete or not comparable information is provided by the Commission -- an entity that consumers rightfully look to for accurate information -- consumers are unlikely to focus on the inherent limitations of the data (lack of uniform systems across carriers, the lack of jurisdiction over all competitors, etc.) and, therefore, attach undue weight to it. Accordingly, because of the limitations of carrier-supplied data, the Commission should turn to consumers for any service quality information.

3. Many Surveys Currently Exist.

The 3/30/07 ACR correctly observes that "[o]f the performance indicators analyzed, the indicator that could be adapted to both wireline and wireless services most easily is the customer

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29 *Id.* at 30-31.
30 *Id.* at 24.
31 *Id.* at 23.

satisfaction surveys, which measure satisfaction with installations, repairs and answering time."[32] But the Commission's contemplated course of undertaking either creation or adaptation of surveys is premature. While the record adequately supports the use of customer surveys to assess service quality as part of a revised regulatory regime that relies primarily on competition, AT&T believes the exact nature and format of Commission efforts to review the adequacy of existing surveys and to inform consumers of survey results is best addressed through workshops. Third party organizations already conduct surveys of telecommunications service quality, and these surveys could provide a starting point for discussion among interested parties at workshops. For example, J.D. Power and Associates conducts studies measuring business customer satisfaction with providers of local telephone voice services in two segments: small/midsize businesses (companies with 2 to 499 employees) and large enterprises (500 employees or more). Seven factors are used to determine overall satisfaction: performance and reliability; billing; sales representatives/account executives; company image; cost of service; offerings and promotions; and customer service.[33] At workshops, interested parties could discuss surveys that exist, discuss whether they already adequately measure customer satisfaction, and how the Commission could address customer education of such surveys and their results. If the Commission determines that existing surveys are inadequate, workshops could further develop how they are best supplemented. [34]

4. <u>If Any Monitoring Is Necessary, Surveys Conducted by Neutral Third Parties Are Not Subject to the Pitfalls of Traditional Monitoring and Reporting.</u>

If the Commission determines that it needs to continue to monitor service quality, customer surveys provide a unique opportunity for the Commission and consumers to understand the performance of regulated carriers compared to the *entire* marketplace because customer surveys can gather information about unregulated services that the Commission cannot obtain directly from

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[32] 3/30/07 ACR at 4. AT&T notes that the wireless industry does not have "installations" and "repairs."

[33] *See* "J.D. Power and Associates Reports: AT&T and Embarq Rank Highest in Business Customer Satisfaction With Local Telephone Services," *PR Newswire* (Apr. 25, 2007), available at <http://www.prnewswire.com/news/index_mail.shtml?ACCT=104&STORY=/www/story/04-25-2007/0004573317&EDATE=> (as visited May 10, 2007).

[34] *See* Harris Opening at 30-31 (discussing harms in providing too much information that is not useful).

carriers. Moreover, in addition to providing information to consumers, surveys allow the Commission, if necessary, to "assess whether the competitive market adequately protects consumers"[35] because surveys directly provide the Commission with information on consumers' experience, which is more valuable than trying to indirectly assess the adequacy of service quality through arbitrary measures.

Surveys conducted by neutral third parties facilitate competition by addressing the need to have information regarding all providers that is comparable, accurate, and reliable.[36] More importantly, such surveys can provide a wealth of information not available by any other means. Specifically, third party surveys employing sound statistical and methodological standards level the playing field in virtually every respect. They eliminate problems resulting from the limitations of the Commission's jurisdiction, the lack of uniform systems across carriers, and the constantly changing systems even within a single carrier. Importantly, unlike performance standards, surveys can be readily adapted to address the changes occurring in the telecommunications market with breathtaking speed.

B. Sufficient Protection Related To Public Safety/National Security Already Exists.

Regulations "applied to measures that affect consumer health and safety provide consumers with confidence in the market."[37] The Commission examined consumer protection issues since comments last were filed in this docket in 2003, and found robust protection already is available to consumers in California.[38] The Commission also specifically identified existing rules protecting the health and safety of consumers, and adopted new rules where appropriate.[39] Accordingly, any additional measures necessary to protect the health and safety of Californians should address only those issues not otherwise covered by existing statutes and regulations. In addition to those noted in the Consumer Bill of Rights proceeding, AT&T believes that substantial State and Federal public

35 3/30/07 ACR at 3.
36 Harris Opening at 23-24.
37 *Id.* at 36.
38 D.06-03-013 at 37-42.
39 *Id.* at Appdx. A, pp. 4-5, *id.* at Appdx. D, p. 19.

safety protections relating to the reliable operation of the telecommunications network exist and, when coupled with the measures already identified in D.06-03-013, satisfy any need for providing confidence in the market.[40]

C. Relying on Competition Does Not Unduly Limit the Commission's Ability to Address Specific Problems.

As the Commission repeatedly has recognized, competition is the most effective consumer protection mechanism.[41] Customer satisfaction surveys can help empower consumers to reward those carriers who provide desirable price-quality combinations.[42] A decision in this docket to rely on competition to regulate service quality will not undermine the Commission's ability to respond to problems, when necessary. In fact, by acknowledging a reliable source of information on carrier practices from the perspective of consumers in the form of customer surveys, the Commission could more effectively promote the interests of those consumers.

A different regulatory model does not materially change the Commission's investigatory and adjudicatory powers. Should the Commission see evidence of service quality abuses that affect consumer health and safety, it retains the authority to promptly investigate such developments. For example, while the Commission articulated its "new regulatory role" in D.06-03-013, it also reaffirmed and enhanced the available mechanisms to assess and address problems.[43] In addition to consumer education efforts embodied in D.06-03-013, the Commission noted the availability of informal (through the Consumer Affairs Branch) and formal complaint procedures that are available to resolve a consumer's concerns and also "help[] [the Commission] target and resolve problems quickly and effectively."[44] Formal complaint proceedings -- usually brought by consumer groups -- and Commission investigations remain powerful tools to manage carrier conduct. In D.06-03-013, the Commission also ordered: renewal of the Regulatory Complaint Resolution Forum, workshops

40 The Commission is also examining issues relating to backup power and emergency notification in R.07-04-015.
41 *See, e.g.*, D.06-03-013 at 2.
42 Harris Opening at 27.
43 D.06-03-013 at 93-108.
44 *Id.* at 93.

on best practices on handling consumer complaints, expanded call center and database capabilities, a Community Based Organization Action Plan, review of formal complaint procedures, creation of a Special Telecommunications Fraud Unit and publicity relating to the fraud hotline, increased collaboration with law enforcement and other governmental entities, and investigation of streamlined enforcement procedures. Reliance on competition does not hinder the Commission's authority, but rather frees resources, previously devoted to monitoring compliance with unnecessary measurements, to be assigned to more productive efforts in the interests of consumers, such as those identified in D.06-03-013.

IV. CALIFORNIA-SPECIFIC AND COMPANY-SPECIFIC REQUIREMENTS SHOULD BE ELIMINATED.

The existing system of service quality monitoring and reporting, including G.O. 133-B, merger conditions, and company-specific requirements cannot be reconciled with the Commission's current regulatory policy favoring reliance on competition.[45] These measures are unnecessary, result in costs ultimately born by consumers of regulated communications service providers (or consumers of certain service providers or classes of service provider), and impose competitive inequalities. The 3/30/07 ACR identified a need for change, and recognized that "a new approach should be examined."[46] That approach should eliminate California-specific and company-specific requirements.

A. Any Value of Traditional Service Quality Regulation Has Outlived Its Usefulness.

Even before the Commission's landmark decisions in 2006, the Commission highlighted the need to evaluate whether the value of specific service quality measures outweighed their costs.[47] As has recently become clear, because competition is an effective mechanism to manage telecommunications services, the value of continued service quality monitoring and reporting is not sufficient to justify the costs. Rather, because there is sufficient competition to allow consumers to

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45 These requirements currently do not apply to the wireless industry.

46 3/30/07 ACR at 3-4.

47 *See* Assigned Commissioner and Administrative Law Judge's Ruling Denying in Part and Granting in Part Motion to Suspend at 3 (Mar. 7, 2003).

opt out of unacceptably bad service (as each particular consumer defines it), and because consumers do not understand most of the existing reporting, traditional service quality regulation is at best superfluous, and arguably detrimental to consumers.[48] Easily accessible, consumer-focused information that consumers value and can use to make informed decisions, not overly detailed/irrelevant data, best promotes the Commission's statutory mandates and policy goals.[49]

While there is little incremental benefit, there are unquestionably both direct and indirect costs and burdens associated with traditional service quality monitoring and reporting. For example, the 3/30/07 ACR notes that "current or revised service quality measures and standards cannot apply to all services. In order to achieve symmetric service quality regulation, new measures would have to be adopted or old measures would have to be revised and/or eliminated. Fashioning measures that would apply to all services would be both difficult and time-consuming."[50]

In the Consumer Bill of Rights proceeding, this Commission rejected adoption of new rules or standards absent compelling evidence of a specific need due to the potential for unintended consequences, compliance costs, confusion, and decreased availability of service options.[51] In D.06-03-013, the Commission evaluated an evidentiary record including written and live testimony from experts for both carriers and consumer groups and concluded that "[r]ules can cause their own problems, which may overshadow any benefits bestowed on consumers."[52] For the same reason, the Commission should be loathe to regulate the service quality of only a portion of the providers with any variant of the rules-based approach embodied in G.O. 133-B, and other existing service quality mechanisms.

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48 Harris Opening at 30-31.

49 *Id.* at 31, 35.

50 3/30/07 ACR at 3-4. AT&T disagrees that symmetric regulation of all competitors would be the result of even the most arduous and time-consuming efforts due to the Commission's inability to regulate all competitors equally and, in some instances, at all. Because the 3/30/07 ACR appropriately concludes a new approach is needed, however, AT&T will not address this issue in detail.

51 D.06-03-013 at 32-35.

52 *Id.* at 32.

The evidentiary record in this proceeding already documents substantial costs associated with service quality monitoring and reporting for carriers, consumers, and the Commission. As Dr. Harris observed, existing monitoring and reporting has both direct and indirect costs:

> The estimation of the cost of providing a measurement must include all costs associated with the measure. That includes the cost borne by the service providers in collecting, verifying and reporting the information, the cost borne by the CPUC or other organizations of administering and disseminating the information and the cost of accessing and analyzing the information which is borne by consumers.[53]

As discussed in its 2003 filings, AT&T incurs costs as a result of California-specific or company-specific service quality monitoring and reporting for both existing measures and any new measures that are added.[54] Due to the number of "voice service providers in California, the cost of requiring the reporting of useful results will increase very rapidly as the number of measures is increased."[55] Since 2003, the telecommunications market has further expanded to include unregulated VoIP and Cable providers, which makes traditional reporting even more costly and difficult, and also presents additional jurisdictional issues.

B. Company-Specific or Sector-Specific Regulations Should Be Eliminated.

The real cost of California-specific and company-specific monitoring and reporting in a competitive market is the disadvantage of asymmetrical regulation borne by a limited subset of competitors. "[C]ompany-specific or sector specific regulations inhibit competition in telecommunications markets . . .,"[56] and cannot be reconciled with the Commission's goal "to rely on competition, wherever possible."[57] This is especially true of company-specific requirements, such as the Out of Service requirement (discussed below), that not only impose unique obligations on certain carriers but also carry with them penalty mechanisms that further distort the competitive market.

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53 Harris Opening at 32.

54 Opening Comments of SBC California at 9-10. Estimated costs have only increased since this information was provided in 2003.

55 Harris Opening at 32.

56 D.06-08-030, Finding of Fact 83.

57 3/30/07 ACR at 3.

In a competitive market, "[m]easures which provide information on only a few carriers are of little, if any, value to consumers."[58] Accordingly, for consumers to enjoy the full benefits of a competitive market, all carriers must be subject to the same regulations so that information is complete and uniform. Because the Commission's jurisdiction does not reach all competitors, traditional service quality regulation is no longer a viable option. The Commission should assure that no carrier is advantaged or unduly impaired by regulatory obligations not applied to all.

For some time, the traditional regulatory model has been strained by the conflicting pressures of monopoly era rules and an explosion of competition. Carriers, consumers and the Commission struggled to make a round peg fit in a square hole. While AT&T in no way intends to minimize the importance of the issues deferred from prior proceedings, those issues relate to historical circumstances. There is no reason to believe that competition will not adequately address the concerns of prior decisions as the competitive telecommunications market matures and the vestiges of traditional regulation are eliminated. The Commission took a similar approach in the URF Phase I decision by eliminating asymmetric monitoring reporting requirements, effective with that decision. This same approach should be taken here. To do otherwise would prevent AT&T from competing on a level playing field with other ILECs, cable carriers, wireless carriers, and VoIP companies, which are not required by this Commission to report service quality measures for OOS repair service.

The Commission's recent decisions reflect its belief that competition can and will adequately address important issues like consumer protection and just and reasonable rates. The wisdom of this path has been demonstrated in other industries,[59] and will be borne out for telecommunications in the months, years, and decades to come. Concerns arising in the traditional regulatory model, however, are just that. They have no place in a regulatory model premised on competition, and importing them into the nascent competitive model would be a step backward.

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58 Harris Opening at 32.

59 *Id.* at 24-26.

The ACR specifically requests comments on whether customer satisfaction surveys in a competitive market adequately address the concerns of D.03-10-088 (identifying criticisms, ambiguities, and omissions of G.O. 133-B) and D.04-09-062 (regarding consideration of new rules and practices for disclosures of wireless coverage and capacity information). For the reasons discussed above, the answer is "yes." AT&T proposes eliminating the MCOT report[60] and G.O. 133-B because the arbitrary measures imposed by these reports have limited value to consumers in choosing among competitive alternatives, but have inherent costs.[61] Likewise, in a competitive market, products that do not meet the expectations of consumers will not be successful. Third party surveys directly address the Commission's concern in D.04-09-062 that customers did not have access to information that may have affected their purchasing decisions. No further requirements are necessary.

The Commission also deferred Out of Service requirements to this proceeding.[62] AT&T California's petition to modify the Out of Service ("OOS") mechanism identified numerous problems with this company-specific measure, including that other carriers are not subject to similar penalties even when they have longer out-of-service intervals than AT&T California. The OOS requirements imposed by various decisions have proven to be labor intensive and costly. AT&T California's OOS reporting, standards and penalties are inconsistent with competitive parity, and have no place in a regulatory environment driven by competition. AT&T respectfully requests that they be eliminated.

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[60] D.03-10-088 at 121 (ratifying ALJ decision requiring Pacific Bell and Verizon "to continue to report certain data to this Commission for measures required under the FCC's MCOT requirements that expired in November 2002. (Verizon agreed with TURN voluntarily to continue the reporting until after a final decision in this proceeding.)." Pacific Bell was required to continue MCOT reporting "until further notice of the Commission."). *See also id.* at 241 (Ordering Paragraphs 2-3).

[61] The restriction established in D.03-10-088, Ordering Paragraph 9 related to GO 133-B ("Neither Pacific nor Verizon shall change the way they count their GO 133-B results (except as ordered herein) without advance permission of this Commission.") should be eliminated in the event that the Commission does not eliminate GO 133-B in its entirety.

[62] *See* D.07-04-019.

V. CONCLUSION

The Commission has charted a new path for telecommunications regulation in California that relies heavily on the role of competition. This path has been thoroughly vetted in other dockets through extensive briefing and evidentiary hearings. The watershed decisions were made last year. Application of the Commission's policy to rely on competition whenever possible to service quality can be supported by the same reasoning and authority the Commission already found persuasive. In fact, changing course again, or straddling inconsistent regulatory models, jeopardizes the progress embodied in recent Commission decisions. The role of competition, complemented by consumer education and existing protections of public safety, remains the appropriate path for telecommunications in California.

Dated: May 14, 2007.

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CERTIFICATE OF SERVICE

I, Thomas Selhorst, hereby certify that I have this day served a copy of the foregoing **OPENING COMMENTS OF PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T CALIFORNIA (U 1001 C) AND CERTAIN AFFILIATES PROVIDING TELECOMMUNICATIONS SERVICES IN CALIFORNIA IN RESPONSE TO MARCH 20, 2007 ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO** on all persons on the official service List in R.02-12-004, via e-mail, hand-delivery and/or first-class U.S. Mail.

Dated this14th day of May 2007 at San Francisco, California.

AT&T CALIFORNIA
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/s/
Thomas Selhorst

CALIFORNIA PUBLIC UTILITIES COMMISSION
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